dated May 30, 1974 reads:–

"25. Allowance.– (a) All employees shall be entitled to a fixed monthly overtime allowance equivalent to fifty per cent (50%) of the individual basic salary per month.

(b) Employees who are requested to be on duty after their normal working hours shall be paid two (2) times of the employee's normal rate of pay per hour.

(c) The Company shall pay a food allowance to employees as follows:–

Captain 1st and 2nd Engine Driver Bunkering Clerk	$90 per month
Serang Quarter Master Sailor (Deck-hand) Greaser	$60 per month

It is clear that no inference can be drawn from Clause 25(c) itself or from the evidence of Ong Hock Khiow that the amounts of $90/- and $60/- were genuine pre-estimates of the expenses necessarily incurred by the employees of the company who were engaged as locally engaged bunkering employees.

In my opinion the trial judge was correct on the evidence before him in finding the appellant company guilty and the appeal must accordingly be dismissed.

Appeal dismissed.

Solicitors: *Drew & Napier.*

IN THE MATTER OF DREW & NAPIER STAFF RETIREMENT FUND.

[O.C.J. (Wee Chong Jin C.J.) June 28, 1984]
[Singapore – Originating Summons No. 210 of 1983]

Trust – Staff Retirement Fund – Fund "providing benefits for its members on retirement or death" – Fund lawfully dissolved – Question of distribution of Fund.

The firm of Drew & Napier, a firm of advocates and solicitors, established a fund called "Drew & Napier Staff Retirement Fund" on December 1, 1962. This was accompanied by "Rules of Drew & Napier Staff Retirement Fund". The said Rules provided, *inter alia,* for the appointment of Trustee of the Fund and for the assets of the Fund to be vested in the Trustees or in a Trust or Nominee Company approved by the Trustees.

The object of the Fund was to provide "benefits for its Members on retirement or death" (Rule 2).

Rule 23 of the Rules provided the Firm with power "to close and discontinue the Fund ..." and thereupon "pay ... to each member or to his order the amount found to be due to such member, having regard to the total value of the assets of the Fund including the Reserve Account and to the amount standing to the credit of each member with the Fund".

Apart from Rule 23, the Rules did not contain any provision for the method and quantum of distribution of the total net assets of the Fund among its members.

The Firm decided to dissolve the Fund with effect from January 1, 1983 and all the Trustees and members of the Fund had accepted that the Fund had been lawfully dissolved as of that date.

As at August 30, 1983, the amount standing to the credit of each individual member of the Fund had been paid into the member's Central Provident Fund and as at August 20, 1983 the Trustees had available for distribution among the members the sum of $854,885.00 less expenses in connection with the closing of the Fund. The issue before the Court was how the said sum of $854,885.00 less closing Fund expenses and any interest accrued thereafter was to be distributed among the members of the Fund.

Held: (1) Rule 23 on its true construction and having regard to the defined meaning of "member" in Rule 1 and the Rules as a whole, enjoins the Trustees to distribute the net assets of the Fund, arrived at after deducting the expenses incurred in connection with its dissolution and the amount standing to the credit of each member of the Fund among all the members of the Fund in proportion to the amount standing to the credit of each member irrespective of each member's number of years of service in the Firm;

(2) the costs of all parties must be paid out of the Fund.

ORIGINATING SUMMONS.

H. Elias for the applicants.
M. Karthigesu for "A" members.
T.P.B. Menon for "B" members.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The firm of Drew & Napier ("the Firm") is a firm of advocates and solicitors. On December 1, 1962 the Firm established a fund called "Drew & Napier Staff Retirement Fund" ("the Fund") by making rules called "Rules of Drew & Napier Staff Retirement Fund" ("the Rules"). The Rules provide, *inter alia,* for the appointment of Trustees of the Fund and for the assets of the Fund to be vested in the Trustees or in a Trust or Nominee Company approved by the Trustees. The Fund has been managed exclusively by the Hongkong Bank Trustee (Singapore) Limited, a Trust Company.

Rule 1 of the Rules provides, so far as material, as follows:—

"'The Fund" shall mean the Fund to be constituted in accordance with the Rules and all cash and investments from time to time representing the same.

"Employee" shall mean any person in the employ of the Firm on its permanent staff (other than Advocates and Solicitors) who shall have been continuously employed by the Firm for a period exceeding three months.

"Member" shall mean any person in the employ of the Firm whose application for membership of the Fund has been accepted by the Trustees and who contributes to the Fund.

"Net profit" shall mean the gross earnings of the Fund howsoever derived after deducting from such gross earnings all costs charges, ... and losses, howsoever incurred, in connection with the Fund.'

Rule 2 of the Rules provides as follows:—

"2. The Fund shall be called 'Drew and Napier Staff Retirement Fund' and it shall be constituted in accordance with and governed by the Rules for the object of providing benefits for its Members on retirement or death."

Rule 7(e) of the Rules provides, so far as material, as follows:—

"The moneys including the net profit of the Fund ... in the hands of the Trustees under the Trusts hereof and not presently required for making any payment provided for by the Rules may be invested in any investment for the time being authorised by the law of Singapore ..."

Rule 23 of the Rules provides as follows:-

"23. The Firm shall have power to close and discontinue the Fund at any time upon giving the Trustees and the members three months' notice in writing of its intention to do so and if they shall close and discontinue the Fund the Trustee shall, after making provision for payment of all expenses in connection with the closing of the Fund and subject always to the provisions of Rule 18, *pay* or cause to be paid *to each member or to his order the amount found to be due to such member, having regard to the total value of the assets of the Fund including the Reserve Account and to the amount standing to the credit of each member with the Fund.*" (The emphasis is mine).

The Firm decided to dissolve the Fund with effect from January 1, 1983 and all the Trustees and members of the Fund have accepted that the Fund has been lawfully dissolved as of that date. Apart from Rule 23, the Rules do not contain any provision for the method and quantum of distribution of the total net assets of the Fund among its members. As at August 30, 1983 the amount standing to the credit of each individual member of the Fund has been paid into the member's Central Provident Fund and as at August 30, 1983 the Trustees have available for distribution among the members the sum of $854,885 less expenses in connection with the closing of the Fund. The only issue how to be decided in this Originating Summons is how this sum of $854,885 less closing Fund expenses and any interest accrued thereafter is to be distributed among the members of the Fund.

Rule 9(a) of the Rules provides that "every person entering into permanent service (of the Firm) ... shall be eligible for membership of the Fund but the Firm may at their absolute discretion, ... defer or refuse membership to any employee ..."

In my opinion, Rule 23 on its true construction and having regard to the defined meaning of "member" in Rule 1 and the Rules as a whole, enjoins the Trustees to distribute the net assets of the Fund, arrived at after deducting the expenses incurred in connection with its dissolution and the amount standing to the credit of each member with the Fund, among all the members of the Fund in proportion to the amount standing to the credit of each member irrespective of each member's number of years of service in the Firm. I am unable to accept the argument advanced on behalf of those members of the Fund who have been in continuous service of the Firm for more than five years as of 1st January 1983 that the net assets should be distributed among them only because of their length of service, depreciation in the value of money and the higher salaries paid for comparable employment during the last five years from 25 to 30 years ago. Those considerations are irrelevant on the question of the true construction of Rule 23.

I am also unable to accept the alternative argument advanced on their behalf that as the object of the Fund is to reward long service with the Firm, the net assets of the Fund should be distributed among all the members, each member to receive a sum in proportion to his years of service as at December 31, 1982. The expressed object of the Fund is set out in Rule 2 namely, "for the object of providing benefits for its Members on retirement or death" only. It is to be observed that Rule 23 enjoins the Trustees to have regard "to the amount standing to the credit of each member with the Fund" and not "to the number of years of service each member has with the Firm".

The costs of all parties must be paid out of the Fund.

Order accordingly.

Solicitors: *Drew & Napier; Cooma, Lau, Loh & Karthigesu; Oehlers & Choa.*

A MALAYSIAN REPORTS

LEE SOH HUA v. KOW LUP PIOW & ORS.

B [F.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Syed Agil Barakbah F.JJ.) September 28 & November 22, 1983; March 13, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 18 of 1982]

C *Contract – Sale of Land – Subdivision of land approved subject to compliance with conditions – Whether conditions had to be complied with by the vendor – Question of fact – Finding by trial judge upheld by appellate court.*

Evidence – Admission of oral evidence to vary written agreement – Evidence Act 1950, s. 92

D In this case the appellant was the registered owner of certain lands in Seremban and the respondents were the developers. The appellant had applied for sub-division of the lands and this had been approved subject to compliance with certain conditions. The appellant agreed to sell the land to the respondents. The appellant contended that the respondents knew of the conditions imposed for the sub-
E division of the land and their liability for all expenses for the works. The respondents on the other hand maintained that they did not know of the conditions at the time of the agreement. The learned trial judge after a lengthy trial arrived at the conclusion that both the options and the agreement contained categorical assertions that the appellant had already obtained approval for the subdivision of her land. He accepted the evidence of the respondents that
F they only knew of the three conditions some seven months after the signing of the agreements. The respondents had told the appellant that the responsibility for satisfying the conditions rested with her under the agreement. The learned trial judge granted specific performance of the agreement and awarded $50,000 as damages. The appellant appealed.

G **Held,** the learned judge in this case was faced with two different stories and he accepted the story of the respondents as true. The appellate court was not justified in reversing the decision of the trial judge and the appeal should therefore be dismissed.

H *Cases referred to:*

(1) *Tindok Besar Estate Sdn. Bhd.* v. *Tinjar Co.* [1979] 2 M.L.J. 229.

(2) *Tan Swee Hoe Co. Ltd.* v. *Ali Hussain Bros.* [1980] 2 M.L.J. 16.

(3) *Tan Chong & Sons Motor Co. Sdn. Bhd.* v. *Alan Mcknight* [1983] 1 M.L.J. 220, 229.

I (4) *Tan Siew Gaik* v. *Loke Poh Seong* [1978] 2 M.L.J. 171, 172.

(5) *Lebai Taib* v. *Abdul Ghani & Anor.* [1973] 1 M.L.J. 109.

FEDERAL COURT.

Raja Abdul Aziz Addruse (*Wong Weng Kwai* with him) for the appellant.